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No. 89-1279

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1989

PACIFIC MUTUAL LIFE INSURANCE COMPANY,
Petitioner,
v.

CLEOPATRA HASLIP, CYNTHIA CRAIG,
ALMA M. CALHOUN, and EDDIE HARGROVE,
Respondents.

On Writ Of Certiorari To The
Supreme Court Of Alabama

BRIEF OF AMICI CURIAE BETHLEHEM
STEEL CORPORATION AND HERCULES
INCORPORATED IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether punitive damages awarded by a state court jury which has, and is told that it has, complete discretion as to whether to award punitive damages and the amount of punitive damages are sustainable under the Due Process Clause of the Fourteenth Amendment.

TABLE OF CONTENTS

	Page
Question Presented	i
Interest of <i>Amici</i>	1
Summary of Argument	2
Argument	3
Point I— Alabama's Procedures For Imposing Punitive Damages Do Not Provide Due Process	5
A. Alabama's Punitive Damages Laws Are Unconstitutionally Vague	6
B. Alabama's Punitive Damages Rules Do Not Provide Adequate Notice of Penal Consequences	7
Conclusion	10

TABLE OF AUTHORITIES

	Page
CASES	
Federal	
<i>Bankers Life & Casualty Co. v. Crenshaw</i> , 486 U.S. 71 (1988)	5
<i>Browning-Ferris Industries of Vermont v. Kelco Dis- posal, Inc.</i> , 492 U.S. ___, 109 S.Ct. 2909 (1989)	5
<i>City of Mesquite v. Aladdin's Castle, Inc.</i> , 455 U.S. 283 (1982)	6
<i>City of Newport v. Fact Concerts, Inc.</i> , 453 U.S. 247 (1981)	5
<i>Coates v. City of Cincinnati</i> , 402 U.S. 611 (1971)	6
<i>Daniels v. Williams</i> , 474 U.S. 327 (1986)	5
<i>Gertz v. Robert Welch, Inc.</i> 418 U.S. 323 (1974)	5
<i>Giacco v. Pennsylvania</i> , 382 U.S. 399 (1966)	6
<i>Hoffman Estates v. Flipside, Hoffman Estates, Inc.</i> , 455 U.S. 489 (1982)	6
<i>International Brotherhood of Electrical Workers v. Foust</i> , 442 U.S. 42 (1979)	5
<i>Kolender v. Lawson</i> , 461 U.S. 352 (1983)	6, 7
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	8
<i>McGautha v. California</i> , 402 U.S. 183 (1971)	7
<i>Roberts v. United States Jaycees</i> , 468 U.S. 609 (1984)	7
<i>Smith v. Goguen</i> , 415 U.S. 566 (1974)	6
<i>United States v. Batchelder</i> , 442 U.S. 114 (1979)	8

TABLE OF AUTHORITIES - Continued

Page

STATE

<i>City Bank of Alabama v. Eskridge</i> , 521 So.2d 931 (Ala. 1988)	4
<i>K-Mart v. Weston</i> , 530 So.2d 736 (Ala.1988)	4

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INTEREST OF AMICI

Bethlehem Steel Corporation and Hercules Incorporated, with the consent of the parties, file this brief as *amici curiae* in support of the petitioner.¹

¹ Pursuant to Rule 36, consent letters of the parties have been filed with the Clerk of the Court.

Bethlehem Steel Corporation is one of the largest domestic producers of steel and steel products. It is also engaged in mining and construction and repair of steel structures such as off-shore drilling platforms, and ships. Hercules Incorporated is a major manufacturer of chemicals, flavors, food ingredients and advanced materials, including rocket fuels. Both Bethlehem and Hercules are major corporations which are potentially exposed to claims for punitive damages in product liability and commercial law litigations. As such they have a direct interest in articulating for the Court the violation of defendants' due process rights when punitive damages are imposed by juries without clear guidance or precise limitations as to whether, when and to what degree punishment by way of punitive damages can be imposed.

SUMMARY OF ARGUMENT

In Alabama, once a defendant has been found to have committed an act for which punitive damages may be imposed juries are instructed that they have complete discretion to impose punitive damages, and that the amount of punitive damages is likewise in their discretion. While juries are told that the purpose of punitive damages is to punish and deter, the terms "punish" and "deter" are not defined, and no limits are placed by the Court on the degree to which the jury may deem it appropriate to impose punitive damages. Punitive damage verdicts are reduced or reversed only if they "shock" the "judicial conscience".

Punitive damages awarded by juries exercising such limitless discretion violate the Due Process Clause of the Fourteenth Amendment because they amount to the use of vague laws to punish.

Alabama in this case, and by example most other states, should be required to adopt standards for the imposition of punitive damages to provide constitutionally sufficient specificity, to prevent arbitrary and discriminatory punishment and to engender the predictability in legal relations that the law is supposed to foster.

ARGUMENT

I

ALABAMA'S PROCEDURES FOR IMPOSING PUNITIVE DAMAGES DO NOT PROVIDE DUE PROCESS

The procedures by which punitive damages are awarded in Alabama (and the punitive damages systems in most other states) fail to provide juries with standards to guide them in deciding whether punitive damages should be awarded and in determining the appropriate amount of punitive damages and lack objective criteria for judicial review of punitive damages verdicts. An Alabama jury has unlimited discretion to award or withhold punitive damages once it has decided that a defendant has committed an act that permits punitive damages. The judge provides no standard or guideline that informs the jury how it should exercise its discretion to award punitive damages. In this case, the jury was told simply that if

it found that a fraud had been perpetrated it could "in your discretion award what is known as punitive damages", and that the amount of money thus awarded "is to punish the defendant . . . [and] to make an example." (Reporter's Transcript at 895, 897-898)

Once the jury decides to award punitive damages, Alabama provides no standard to guide the jury in determining the amount of punitive damages to award. Although the court may tell the jury that punitive damages have the dual purpose of punishment and deterrence (see Reporter's Transcript at 898) no explanation is given of whether punishment and deterrence imply any quantitative limitation on punitive damages. Thus, the punitive damages awarded is potentially unlimited.

The Alabama Supreme Court has aptly described the lack of objective standards: "there is no legal measure of [punitive] damages" in Alabama. See *K-Mart v. Weston*, 530 So.2d 736, 740 (Ala. 1988). In Alabama, as elsewhere, punitive damages "need bear no relationship to actual damages, and their award is left largely to the discretion of the jury." *City Bank of Alabama v. Eskridge*, 521 So.2d 931, 933 (Ala. 1988).

In Alabama the amount or range of punitive damages is not specified or limited by legislation or by decisional law. No mathematical relationship, whether precise or general, between the degree of injury and the amount of punitive damages is even suggested. There is no requirement that the punishment imposed be proportional to the injury sustained or that it be commensurate with the punishment imposed in other cases involving similar acts or similar amounts of compensatory damages.

An essential purpose of the Due Process Clause is to prevent the arbitrary exercise of governmental power. See *Daniels v. Williams*, 474 U.S. 327 (1986). In diverse cases, many members of this Court have recognized that the boundless discretion of juries to award punitive damages frustrates that purpose, by allowing juries to punish unpopular views (see *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)), or to punish unpopular individuals (see *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 50 n. 14 (1979)), or to punish certain defendants more severely than others because some defendants are viewed as having proverbial "deep pockets" (see *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 270 (1981)).

More recently, in *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 87-88 (1988) Justice O'Connor concurring, joined by Justice Scalia, and in *Browning-Ferris Industries of Vermont v. Kelco Disposal, Inc.*, 492 U.S. ___, 109 S.Ct. 2909, 2923 (1989), Justice Brennan, joined by Justice Marshall, noted the Due Process Clause implications of punitive damages awarded by juries which are guided "by little more than an admonition to do what they think is best." 109 S.Ct. at 2923.

"[W]holly standardless discretion to determine the severity of punishment", as Justice O'Connor characterized the current system of punitive damages (*Bankers Life*, 486 U.S. at 88), implicates both the "void for vagueness" and the "notice" aspects of Due Process.

A. Alabama's Punitive Damages Laws Are Unconstitutionally Vague.

The "void for vagueness" doctrine requires that laws (whether they be penal, quasi-penal or regulatory²) be defined "in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) [criminal statute]; *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982) and *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283 (1982) [municipal licensing ordinances]; *Robert v. United States Jaycees*, 468 U.S. 609 (1984) [civil action to enforce state human rights statute]. The purpose of the doctrine is to inhibit arbitrary and capricious enforcement of the law, see *Kolender*, 461 U.S. at 357-58, and *Smith v. Goguen*, 415 U.S. 566, 574 (1974) and to "reduce the danger of caprice and discrimination in the administration of the laws" *Roberts*, 468 U.S. at 629.

In *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971) this Court held it unconstitutional to enact or enforce a law "whose violation may entirely depend on whether or not [the law enforcement officer] is annoyed." In Alabama, as elsewhere, a jury may impose punishment in the form of punitive damages of huge proportions merely because it is "annoyed" that plaintiff was injured by a corporate Goliath.

² In this regard, there is no significant distinction between "civil" punitive damages and "criminal" punishment. See *Giacco v. Pennsylvania*, 382 U.S. 399, 402 (1966).

Indeed, it is a misnomer to call the act of an Alabama jury in awarding punitive damages an "exercise of discretion", for "discretion" is "judgment guided by reason and kept within bounds." *McGautha v. California*, 402 U.S. 183, 285 (1971) (Brennan, Douglas and Marshall, JJ., dissenting). The jury in this case, and in others like it where the jury is given no guidance, and has no bounds, may be acting merely on caprice.

By telling juries that in deciding whether to award punitive damages and in determining the amount of punitive damages they should "do what they think is best", as Justice Brennan so concisely put it, the punitive damages system not only fails to deter arbitrary and discriminatory punishment, it openly invites caprice, prejudice, discrimination and widely divergent punishment for the same act.

B. Alabama's Punitive Damages Rules Do Not Provide Adequate Notice of Penal Consequences.

The Due Process Clause also requires that statutes provide "actual notice" to the subjects of law as to the consequences of their behavior. See *Kolender*, 461 U.S. at 357-58. Because there is no guidance, from statute or common law, as to when punitive damages will be awarded, or what amount of punitive damages (*i.e.* severity of punishment) may be imposed, it is beyond argument that the laws are so vague that persons of common intelligence can only guess at their meaning and will inevitably differ as to their applicability and application. See *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1984).

Just as criminal statutes which "do not state with sufficient clarity the consequences of violating a given criminal statute" pose serious constitutional questions, *United States v. Batchelder*, 442 U.S. 114, 123 (1979), so punitive damages procedures which do not permit a defendant to know whether his conduct is punishable or the boundaries of his potential liability for particular conduct violate the Due Process Clause.

The current punitive damages scheme warrants review and revision under the criteria articulated by this Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): The private interest that will be affected is the possible loss of huge amounts of property. The risk to citizens is the possibility of erroneous deprivation of such interest through the inadequate procedures now used. The probable value of additional or substitute procedural safeguards is the enhanced predictability and regularity of the law. The government's interest that would be affected by the additional or different safeguards is the benefits it would derive from the more regular and predictable administration of justice and the diminishment of private windfalls that exceed the appropriate bounds of punishment and deterrence.

The unfettered discretion now allowed juries must be replaced with clear standards which will survive scrutiny under the standards for procedural safeguards required by the Due Process Clause. The huge punitive damage awards that have become increasingly common demonstrate the significance of the private interest affected and the risk of deprivation. The value of limiting the currently unbounded whim and caprice of juries is clear: it will introduce elements of predictability and balance to

the legal structure. The impact on the governmental interest will be beneficial, for a constitutionally acceptable punitive damages system will correlate civil penalties with criminal penalties, will discourage private windfalls, and will encourage non-judicial resolution of claims.

Legislatures should be required to establish objective criteria for the imposition of punitive damages and limits on the size of such awards to reduce the likelihood of arbitrary, capricious or discriminatory jury awards which exceed any rational basis either as deterrence or measured punishment. Such is, after all, the business of legislatures: they routinely enact laws that penalize criminal, quasi-criminal and merely negligent behavior by fixing fines, both criminal and civil.

At a minimum, juries must be clearly instructed (as the jury in this case was not) that they may not allow anger, prejudice or other emotion to influence their consideration of awarding punitive damages. They must be told that a defendant's unpopularity, race, residence, corporate form, or other characteristic of personal or legal status are not factors they may consider. Juries must not be told they have complete discretion, but instead should be told that the amount of punitive damages must be carefully tailored to the purpose of deterrence. Juries should be given information about the penalties imposed by statute for analogous acts.



CONCLUSION

The unfettered power of the Alabama jury to impose punitive damages does not comport with the Due Process Clause, and the judgment of the Alabama Supreme Court must be reversed.

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